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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,761	12/10/2003	David K. McKnight	CA920030010US1	1980
32329	7590	06/09/2009	EXAMINER	
IBM CORPORATION INTELLECTUAL PROPERTY LAW 11501 BURNET ROAD AUSTIN, TX 78758			MORRISON, JAY A	
			ART UNIT	PAPER NUMBER
			2168	
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			06/09/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID K. MCKNIGHT and JEFFREY C. TURNHAM

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Appeal 2008-004515  
Application 10/734,761  
Technology Center 2100

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Mailed: June 9, 2009

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Before DALE M. SHAW, *Chief Appeals Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 11, 2008. A Docketing Notice was mailed and Appeal No 2008-4515 was assigned on July 16, 2008. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Claims 1-10 of the instant application are set forth as method claims that may not fall within one of the four statutory categories of invention recited in 35 U.S.C. § 101. On May 15, 2008, the Deputy Commissioner for Patent Examining Policy, John J. Love, issued a memorandum entitled “Clarification of “Processes” under 35 U.S.C. § 101.” This memorandum is further used in conjunction with the Interim Guidelines and the Manual of Patent Examining Procedure § 2106.IV.B, when determining whether a claimed invention falls within a statutory category of invention. *See In re Bilski*, No. 2007-1130, \_\_\_ F.3d \_\_\_, 2008 WL 4757110 (Fed. Cir. Oct. 30, 2008) (en banc). Thus, there is a question as to whether claims 1-10 meet the requirements of being a patent eligible process under 35 U.S.C. § 101.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 1-10 meet the requirements of being a patent eligible process under 35 U.S.C. § 101.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/mls

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